IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18321 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTIAL INSURANCE CO LTD

Versus

SABANA GULAM KOTHMADIWALA

Appearance:

1. Special Civil Application No. 18321 of 2003

MR RAJNI H MEHTA for Petitioner No. 1

MR JB PARDIWALA for Respondent No. 1

MS MEGHA JANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/07/2004

ORAL JUDGEMENT

Mr.Mehta, learned advocate for the petitioner seeks leave to delete respondents No.2, 4 and 5. Leave

is granted.

2) Rule. Mr.Pardiwala waives service of rule on behalf of respondent No.1 and Ms.Megha Jani waives service of rule on behalf of respondent No.3. With the consent of the parties matter is taken up for hearing today.

3) By filing this petition, the petitioner-Insurance company has prayed that the award passed by the Motor Accident Claims Tribunal (Auxiliary) Navsari, in MACP No.179 of 1996 on 30th April, 2003 be quashed and set aside.

4) The aforesaid award is challenged by the petitioner-company by way of filing First Appeals, being First Appeal Nos.1881/2003 to 1886/2003. The learned advocate for the petitioner submitted that since the valuation involved in the present matter is less than Rs.10,000/-, the insurance company has filed Special Civil Application instead of filing First Appeal.

5) The Division Bench of this Court while allowing the aforesaid First Appeals has held as under :

" On going through the judgement, it appears that seven claim petitions were filed in respect of the accident alleged to have taken place on 2.12.1995 when Matador No. GJ 15 B 5562 wherein the claimants' who were travelling, collided with truck no. GU 1U 5509 coming from the opposite direction. It appears that the claim petitions were filed by the injured persons for the injuries suffered by them. In fact, it is the contention of the claimants that the accident was caused due to sole negligence of the driver of the truck. In the written statement filed by the appellant-Oriental Insurance Company, while disputing various allegations, it was specifically contended that the accident was caused due to sole negligence of the truck driver and, therefore, it was contended that there was no question of any award being passed against the appellant.

The tribunal, after considering oral as well as documentary evidence on record, partly allowed the claim applications holding the appellant Insurance Company as well as respondent no.3, the National Insurance Company jointly and severally liable to pay the amount of

compensation to the claimants.

Learned Counsel Mr.Mehta appearing for the appellant submitted that the Tribunal, in the instant case, has recorded a specific finding that the accident was caused due to sole negligence of the truck driver. However, without any explanation, the Tribunal has directed that the appellant would be jointly and severally liable to satisfy the award. In the submission of the learned Counsel, once the driver of the truck is found to be solely negligent, there is no question of appellant being held jointly and severally liable to satisfy the award. We see substance in the submission of learned Counsel for the appellant Oriental Insurance Co.Ltd.

The Issue no.1 raised by the Tribunal which is common in all the claim petitions, reads as under :

"Whether the applicant proves that the Opponent No.1 caused him injury/disability by rash and negligent driving of vehicle bearing Truck No.GJ 1U 5509 dashed with MatadorTempo No. GJ 15 T 5562 ?"

After appreciating the evidence on record, the Tribunal recorded a finding that the accident was caused due to sole negligence of the truck driver. In spite of this finding, the Tribunal has held that the appellant as well as the respondent no.3 were jointly and severally liable to satisfy the award. In our opinion, this is an obvious error committed by the Tribunal. The ultimate direction given by the Tribunal is contrary to the finding on the question of negligence recorded by the Tribunal.

Ms.Megha Jani appearing for respondent no.3 National Insurance Co.Ltd. supports the finding recorded by the Tribunal. In this view of the matter, we allow all the appeals on the question of negligence on the part of the driver of Matador. Consequently, we accept the finding recorded by the Tribunal that the truck driver was solely responsible for causing the accident in question and, therefore, the respondent no.3 National Insurance Company which is the insurer of the said vehicle is liable to pay the amount of compensation to the claimants of claim

petitions.

All the appeals are allowed to the aforesaid extent only. No order as to costs."

6) In this petition, the Court is mainly concerned with the question whether the insurance company is liable to pay compensation to the claimant or not. As the present Special Civil Application is also arising out of the same award and is part of the same group of First Appeals, this Special Civil Application is also required to be disposed of on the same line. Therefore, this Special Civil Application is allowed, as there is no question of negligence on the part of the driver of matador and the truck driver was solely responsible for causing the accident and the respondent No.3, National Insurance Company, which is insurer of the said vehicle is liable to pay the amount of compensation to the claimant, i.e., respondent No.1, who was applicant of MACP No.179/1996.

7) Accordingly, this petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs.

(P.B.Majmudar,J.)

/malek